

**STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF: The claim for  
reimbursement under the PECFA  
Program by**

MADISON HEARING OFFICE  
1801 Aberg Ave., Suite A  
P.O. Box 7975  
Madison, WI 53707-7975  
Telephone: (608) 242-4818  
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Ray deLong, REI

**Hearing Number: 00-007  
Re: PECFA Claim # 54484-9361-11**

**PROPOSED HEARING OFFICER DECISION**

**NOTICE OF RIGHTS**

Attached are the Proposed Findings of Fact, Conclusions of Law, and Order in the above-stated matter. This is a **FINAL DECISION**.

Any party aggrieved by the decision may request a rehearing pursuant to Wis. Stat. §227.49 within 20 days of the date of this decision by sending a petition to Dennis Kozich, Chief Counsel, Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970. A petition for judicial review must be filed no more than 30 days after the date of this decision or the date of a decision on a request for a rehearing, if any, pursuant to Wis. Stat. §227.53. The Petition for judicial review must be served on the Department of Commerce, office of the Secretary, 123 W Washington Avenue, 6th Floor, P.O. Box 7970, Madison, WI. 53707-7970.

**STATE HEARING OFFICER:**  
Karen L. Godshall

**DATED AND MAILED:**  
November 20, 2000

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**MAILED TO:**

**Appellant Agent or Attorney**

Cheryl Kuyoth  
Kuyoth & Associates, Inc.  
P.O. Box 296  
Stratford, WI S4484

**Department of Commerce**

Kristiane Randal  
Assistant Legal Counsel  
P.O. Box 7838  
Madison, WI 53707-7838

**STATE OF WISCONSIN**

**DEPARTMENT OF COMMERCE**

In the matter of

The Claim for Reimbursement Pursuant  
To the Provisions of the PECFA Program  
By

Ray deLong, REI  
4080 N 20th Ave  
Wausau WI 54401

PECFA Claim #54484-9361-11  
Hearing # 00-007

Appellant,

vs.

Wisconsin Department of Commerce,

Respondent

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**FINAL DECISION**

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State Hearing Officer  
Karen L. Godshall

Dated and Mailed: NOVEMBER 20, 2000

Mailed to:

Ray deLong  
REI  
4080 N 20th Ave  
Wausau WI 54401

Kristiane Randal  
Assistant Legal Counsel  
PO Box 7970  
Madison WI 53707-7970

Cheryl Kuyoth  
Kuyoth & Associates, Inc.  
PO Box 296  
Stratford WI 54484

## **FINDINGS OF FACT**

On December 21, 1999, a claim determination was issued to Kuyoth, Inc., based upon a claim made for reimbursement of petroleum cleanup costs at a site known as Jeff's Auto Water Works, 211 S. Weber Street, in Stratford, Wisconsin. That determination allowed reimbursement for certain costs and found about \$10,750 in costs to be ineligible for reimbursement.

The determination contained a statement regarding appeal rights. It stated "An owner or an operator, or an attorney representing the owner or the operator, (but not a consultant or claim preparer) may request an administrative hearing to review this action."

On January 10, 2000, a letter was received from Ray deLong of REI, attempting to appeal a portion of the disallowed amount. That letter was received by the Department of Commerce within the specified time limit for appeal.

The Department of Commerce subsequently moved to dismiss deLong's appeal on the basis that the appeal was not filed by the employer (the site owner) or anyone with legal authority to act on the employer's behalf.

Following receipt of that motion in early July of 2000, the appellant was given more than 30 days to respond. No response to the motion to dismiss has been received from deLong to date.

## **APPLICABLE STATUTES AND CODE PROVISIONS**

Wisconsin Stat. Section 101.02(6)(e) provides that appeals may be filed by persons who are "interested" in the cleanup site property, specifically stating: "Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in this subchapter."

## **DISCUSSION**

The appellant in this case identified himself at one time as "agent" for the site owner. However, his only relationship with the site owner, so far as his documentation establishes, is that he was under contract as a consultant with regard to the site owner's cleanup efforts. That contract does not specifically authorize deLong to act as an agent for purposes of appeal, and there is nothing in the available records to suggest that deLong had an ownership interest or occupancy interest in the property, or that he had authority to act as an attorney for the property owner. Moreover, the property owner had adequate notice of the requirements for filing an appeal based upon the notice which it received in the claim determination (award) letter.

## **CONCLUSIONS OF LAW**

Ray deLong was not an owner or occupant of the PECFA remediation site referred to in the above claim, and was not authorized to file an appeal to the PECFA award letter of December 21, 1999, within the meaning of Wis. Stat. Sec. 101.02(6)(e).

## **DECISION**

The motion by the Department of Commerce counsel is granted. The appeal filed by Ray deLong, requesting a hearing regarding the PECFA award on the Jeff's Auto Water Works remediation site (211 S. Weber Street,. Stratford, Wisconsin) is dismissed.

By

**KAREN L. GODSHALL**  
**STATE HEARING OFFICER**